D.B. CIVIL SPECIAL APPEAL(W)NO.948/2006

State of Rajasthan & Ors.
Vs.
Smt. Vishakha Devi

DATE OF ORDER :: 02-03-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri H.V. Nandwana, Dy.G.A. for the State.
Shri R.C. Joshi, for the respondent.

This special appeal is directed against the order of the learned Single Judge dated 28.4.2006 in SBCWP no.7367/1993 allowing the writ petition of the respondent with a direction to the appellants to pay her minimum of the pay scale on the post of Paricharak from the date of award of the Labour Court, and consider her claim for regular appointment on the post.

The facts of the case, briefly stated, are that the respondent was initially appointed as a part time Paricharak – a Class IV post - on 2.4.1983. Her services were terminated with effect from 14.3.1986. She raised industrial dispute. The Labour Court by award dated 19.6.1992 held the termination of services to be illegal and directed her reinstatement with all consequential benefits. It is not in dispute that pursuant to the award, the respondent was reinstated and paid due emoluments.

The respondent later filed writ petition seeking direction for regularisation of her service and payment of regular pay in the prescribed scale contending that she was being paid emoluments on daily wage basis for over a decade and she was entitled to parity of pay on the principle of equal pay for equal work. She stated that though she was said to be a part time employee but her duty spanned over the whole day like any regular employee. The learned Single Judge found that as per the duty chart submitted by the respondent which had not been disputed by the appellants, she was performing regular duties of Paricharak, and in that view of the matter held that she was entitled to at least minimum of the pay of the post of Paricharak from the date of the award.

Shri H.V. Nandwana, Deputy Goverment Advocate appearing for the appellant submitted that by the award the respondent was merely restored to her erstwhile position, that is, as a part time employee who was paid emoluments on daily wage basis and she cannot claim a better status. Counsel contended that daily wage employee cannot claim parity of pay like regular employee and in this regard, he placed reliance on State of Haryana Vs. Tilak Raj 2003 (6) SCC 123.

The Supreme Court in the above case disapproved the grant of pay scale to daily wage employee. In the

instant case, as seen above, direction is to pay minimum of the pay of the post of Paricharak. Be that as it may, it is not in dispute that pursuant to direction of the learned Single Judge, the respondent was paid the emoluments at the minimum of the pay scale, and thus the direction of the learned Single Judge stands complied with. The award of the Labour Court, it is said, was never challenged, and the present impugned order was passed in another writ petition filed by respondent on a different cause of action and for different relief altogether. Interference with the impugned order of the learned Single Judge at this stage may result in action for recovery of excess payment, which we are not inclined to do. It is relevant to mention here that the representation pursuant to the observations of the learned Single Judge for regularisation of the service however has been rejected.

The appeal stands dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen